Supreme Court, U.S.
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No. 97-42

In the Supreme Court of the United States

OCTOBER TERM, 1996

EASTERN ENTERPRISES, PETITIONER

v.

SHIRLEY S. CHATER,
COMMISSIONER OF SOCIAL SECURITY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701 *et seq.*, violates the Due Process Clause or the Just Compensation Clause of the Fifth Amendment as applied to petitioner.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A23) is reported at 110 F.3d 150. The opinion of the district court granting summary judgment in favor of respondents (Pet. App. A25-A27) is unreported. An earlier opinion of the district court denying petitioner's motion for summary judgment and denying third-party defendant Peabody Holding Company's motion to dismiss (Pet. App. A28-A38) is reported at 942 F. Supp. 684.

JURISDICTION

The judgment of the court of appeals was entered on April 7, 1997. The petition for a writ of certiorari was filed on July 3, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701-9722 (Coal Act or Act), was enacted in response to a crisis in health care costs in the coal industry. The Act has origins in a series of collective bargaining agreements between coal mine operators and the United Mine Workers of America (UMWA). Those contracts, known as National Bituminous Coal Wage Agreements (NBCWAs), created multi-employer benefit plans that provided health care benefits to active and retired miners and to their dependents. See Pet. App. A3.

The health care benefits of coal miners, their dependents, and their survivors have for many years been a central issue in labor relations in the coal industry. In 1946, the federal government nationalized the coal industry in response to a UMWA strike over health and retirement benefits. The government and the UMWA subsequently negotiated a contract (the Krug-Lewis Agreement) that, among other things, established employer-sponsored health and retirement programs. In 1947, after the mines were returned to private control, the UMWA and the Bituminous Coal Operators Association (BCOA) entered into the first NBCWA, which created a multi-employer health and welfare fund. Pet. App. A3.

In 1950, a successor NBCWA established that, in exchange for union acquiescence in the mechanization of the mines, signatory operators would create a

new welfare and retirement fund (the 1950 W&R Fund) financed by a per-ton levy on coal mined by the operators. Pet. App. A3. The 1950 NBCWA provided the basic benefits format for wage agreements until 1974, when demographic changes and the passage of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, required a restructuring of the health and retirement benefits fund. In response to ERISA's new funding requirements for pension plans, the 1974 NBCWA divided the 1950 W&R Fund into four "trusts," two of which—known as the 1950 Benefit Trust and the 1974 Benefit Trust—financed health care benefits.[1] The 1950 Trust provided health care benefits to miners retiring before 1976, and to their dependents; the 1974 Trust provided benefits to miners retiring after 1976, to their dependents, and to active miners. The 1974 NBCWA expressly promised that covered retired miners would retain health benefits for life. Pet. App. A4.

The 1978 NBCWA included provisions that, *inter alia*, assured health care for "orphaned" miners, *i.e.*, retired miners whose last employer had gone out of business or otherwise ceased contributing to the trusts. It also obligated signatories to make sufficient contributions to maintain benefits due under the 1950 and 1974 plans (the "guarant[ee]" clause) and to continue to contribute as long as the operator remained in business (the "evergreen" clause). Further, the 1978 NBCWA shifted responsibility for active miners and miners who retired after 1975 to single employer plans maintained by the individual companies. See

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[1] The other two trusts, which covered pension benefits for miners, are not at issue in this case.

Coal Commission Report: A Report to the Secretary of Labor and the American People 26 (Nov. 1990) (*Coal Commission Report*).

The provisions in the 1978 agreement for "orphaned" retirees, in combination with larger demographic and economic forces, seriously impaired the financial stability of the multi-employer health benefit funds. The cost of health care rose steeply throughout the 1980s, and the number of orphaned miners increased as employers left the industry or otherwise ceased contributing to the funds. By 1990, the 1950 and 1974 UMWA Benefit Plans had incurred a deficit of more than $100 million, and their funding bases were declining faster than their respective beneficiary populations. *Coal Commission Report* at 43-44.

2. After an 11-month strike at the Pittston Coal Company in which health benefits were a major issue, the Secretary of Labor established the Advisory Commission on Mine Workers Retiree Health Benefits (the Coal Commission), which was charged with assessing the financial prospects of the 1950 and 1974 UMWA health benefit plans and formulating recommendations to assure the health plans' long-term viability. The Coal Commission proposed two possible solutions: an industry-wide funding plan taxing all current coal operators, and a more limited arrangement funded by past and present NBCWA signatories. *Coal Commission Report* at viii, 60-65.

After extensive hearings held to consider the Coal Commission's recommendations and other proposals to remedy the health care crisis in the coal industry, Congress enacted the Coal Industry Retiree Health Benefit Act of 1992, Pub. L. No. 102-486, Tit. XIX, Subtit. C, 106 Stat. 3036 (now codified at 26 U.S.C.

9701-9722), as a comprehensive response to the problem of coal miners' medical costs. The Coal Act was intended "to remedy problems with the provision and funding of health care benefits * * * to the beneficiaries of [coal industry] multi-employer benefit plans," to ensure "sufficient operating assets" for such plans, and "to provide for the continuation of a privately financed self-sufficient program" for delivering health care to the plan beneficiaries. Coal Act § 19142(b)(1)(B), 106 Stat. 3037. Congress found that, to ensure the proper functioning of interstate commerce, the coal industry's existing system for funding retiree health benefits should be modified "to identify persons most responsible for plan liabilities." Coal Act § 19142(a)(2), 106 Stat. 3037.

To achieve these purposes, the Coal Act comprehensively restructured the provision of health benefits to retired miners by, among other things, merging the 1950 and 1974 UMWA Benefit Plans into a new multi-employer plan known as the United Mine Workers of America Combined Fund (Combined Fund). 26 U.S.C. 9702(a)(1)-(2).[2] As is relevant here, the Combined Fund is required to provide "substantially the same" health benefits as were available under the 1950 and 1974 Benefit Trusts to retirees and their dependents who were "eligible to receive, and receiving" benefits from the trusts as of July 20, 1992. See 26 U.S.C. 9703(a)-(f). The Combined Fund thus has a closed class of beneficiaries, the membership of which will diminish over time.

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[2] The Coal Act also established another fund, the 1992 UMWA Benefit Plan, which is not at issue here. See 26 U.S.C. 9712.

Benefits paid through the Combined Fund are financed through annual premiums. Those premiums must be paid by "signatory [coal] operators," *i.e.*, coal operators that either signed a national coal wage agreement between the UMWA and the BCOA or made contributions to the 1950 and 1974 Trusts under related "me-too" wage agreements. See 26 U.S.C. 9701(b)(1) and (3), 9701(c)(1). The Coal Act bases the amount of premiums on the principles that each signatory operator should bear the cost of providing benefits to its own retirees, if possible, and that all signatories should share proportionally in the industry-wide cost of providing benefits to orphaned retirees whose former employers had gone out of business entirely. As is pertinent to this case, premium obligations may be imposed on any signatory operator that "remains in business," 26 U.S.C. 9706(a), with "business" defined by the Act to include "conduct[ing] or deriv[ing] revenue from any business activity, whether or not in the coal industry," 26 U.S.C. 9701(c)(7). The premium obligations of a signatory coal operator that has ceased all business activity may, in turn, be imposed on a "related person" to the signatory operator (such as a corporate affiliate or individual partner)[3] that "remains in business" within the meaning of the Act. 26 U.S.C. 9706(a).

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[3] The term "related person" includes "a member of a controlled group of corporations * * * which includes such signatory operator"; "a trade or business which is under common control * * * with such signatory operator"; anyone with "a partnership interest or joint venture with a signatory operator" that employed eligible beneficiaries; and "a successor in interest of" any of the above. 26 U.S.C. 9701(c)(2)(A).

The Coal Act directs the Commissioner of Social Security to match beneficiaries of the Combined Fund with the signatory operator responsible for paying their health care benefits. 26 U.S.C. 9706(a). The Act sets forth a three-tiered formula for matching miners to coal operators, which attempts to place primary responsibility for financing health care benefits on those signatory operators that signed NBCWAs in 1978 or afterwards. The Commissioner is first directed to assign a miner to the coal operator that signed a national wage agreement in 1978 or later and that most recently employed the miner for at least two years. 26 U.S.C. 9706(a)(1). If no operator meets both criteria, then the miner is assigned to the operator that signed a national wage agreement in 1978 or later and that most recently employed the miner. 26 U.S.C. 9706(a)(2). Finally, if none of the miner's surviving employers signed a national wage agreement in or after 1978, then the miner is assigned to the pre-1978 signatory who employed him for the longest period before 1978. 26 U.S.C. 9706(a)(3).

3. Petitioner mined coal in West Virginia, Pennsylvania, and Kentucky from 1946 to 1965, and was a signatory to the national wage agreements during that period. Pet. App. A6. At the end of 1965, petitioner transferred its coal operations to a wholly owned subsidiary, Eastern Associated Coal Corporation (EACC). *Id.* at A6-A7. EACC was a signatory to all subsequent national wage agreements including the 1974, 1978, and 1988 agreements that guaranteed lifetime benefits to all eligible miners and dependents. *Id.* at A7. In 1987, petitioner sold EACC to Peabody Holding Company. *Ibid.*

The Commissioner of Social Security assigned to petitioner premium responsibilities for more than

1000 miners who had worked for the company before 1966, based on petitioner's status under the Coal Act as the pre-1978 signatory operator for whom the assigned miners had worked for the longest period. Petitioner filed suit in district court, alleging that the Coal Act, as applied to it, violates the Due Process Clause and Just Compensation Clause of the Fifth Amendment, and also challenging on statutory grounds the Commissioner's interpretation of the Coal Act to require it to pay for those miners' benefits. The district court upheld the Commissioner's interpretation of the Coal Act, Pet. App. A29-A35, and also upheld the constitutionality of the Act's funding obligations under the Due Process Clause and the Just Compensation Clause, *id.* at A25-A27.

4. The court of appeals affirmed. Pet. App. A1-A23.[4] Addressing first petitioner's due process challenge to the Coal Act, the court stressed that the Act is "entitled to the most deferential level of judicial scrutiny," and that, "[w]here, as here, a piece of legislation is purely economic and does not abridge fundamental rights, a challenger must show that the legislature acted 'in an arbitrary and irrational way.'" *Id.* at A10 (quoting *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976)). The court also observed that, even though the Coal Act imposes retroactive liability on companies like petitioner, the statute is nonetheless subject to review only under the rational basis standard. *Id.* at A11-A12. "As long as 'the retroactive application of a statute is

[4] The court of appeals upheld the Commissioner's interpretation of the Coal Act as supported by the plain language of the statute. Pet. App. A7-A9. In this Court, petitioner has not challenged the Commissioner's construction of the Act.

supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches.'" *Ibid.* (quoting *Pension Benefit Guaranty Corp.* v. *R.A. Gray & Co.*, 467 U.S. 717, 729 (1984)).

Applying that rational-basis standard, the court upheld the application of the Coal Act to petitioner. The court first held that Congress's purpose in enacting the Coal Act—to resolve persistent problems of labor unrest by ensuring that multi-employer coal retiree benefit plans were adequately funded—was legitimate. Pet. App. A12. The court then rejected petitioner's argument that the statute irrationally assigns miners to companies, such as petitioner, that left the coal industry before 1974 and did not expressly obligate themselves in later NBCWAs to provide lifetime health benefits. *Id.* at A12-A13. The court stressed that petitioner, by signing the pre-1974 NBCWAs, had contributed to miners' legitimate expectations of lifetime health benefits. *Id.* at A13. The court also noted that the statute "actually takes some pains to shield companies like [petitioner]," which ceased coal mining operations before 1974, from disproportionate liability, by directing the assignment of retired miners first to any nondefunct coal mining company that employed them after 1978. *Id.* at A15. And it observed that the Coal Act's system is in many respects more rational than an alternative scheme suggested by petitioner, which would impose all the costs of retired miners' health care on post-1974 coal operators, because such a scheme would require that the health benefits of many retired

miners be paid by companies that had never employed them. *Id.* at A16 n.5.[5]

The court analyzed petitioner's taking claim by applying the three factors identified by this Court in *Connolly* v. *Pension Benefit Guaranty Corp.*, 475 U.S. 211, 224-225 (1986), as having "particular significance" to such a claim: "(1) the economic impact of the regulation on the claimant, (2) the extent to which the regulation [has] interfere[d] with * * * distinct investment-backed expectations, and (3) the [character] of the governmental action." Pet. App. A20 (internal quotation marks omitted).

As for the economic impact of the Coal Act on petitioner, the court first noted that the Act "does not involve the total deprivation of an asset." Pet. App. A20. The court then concluded that the Act's impact on petitioner "reflects a sufficient degree of proportionality" because petitioner will be assigned to pay for miners' medical benefits only when no post-1978 NBCWA signatory can be found, and because petitioner will be liable only for those individuals "whom it employed for a relevant (and relatively long) period of time." *Id.* at A20-A21. With regard to the second *Connolly* factor, interference with petitioner's reasonable investment-backed expectations, the court rejected petitioner's argument that it could have had

[5] The court also rejected petitioner's reliance on *Railroad Retirement Board* v. *Alton Railroad*, 295 U.S. 330, 348-350 (1935), which struck down, under the Due Process Clause, the retroactive application of the compulsory retirement benefit system established by the Railroad Retirement Act, ch. 896, 48 Stat. 1283. The court found *Alton* distinguishable on its facts, but also stated that "*Alton* belongs to an earlier, now discredited doctrinal era, and it is no longer good law." Pet. App. A16.

no expectation that it would be made liable for its retirees' health benefits. Pet. App. A22. In light of the pattern of federal intervention in (and regulation of) the coal industry and petitioner's own role in fostering miners' expectation of lifetime benefits, the court reasoned, petitioner "had every reason to anticipate that it might be called upon to bear some of the financial burden that this expectation [of lifetime health benefits] engendered." *Ibid.*

The court further found that the nature of the governmental action under the Coal Act lends support for the Act's constitutionality. Pet. App. A22-A23. The Act, noted the court, does not require the physical invasion or permanent appropriation of petitioner's property, but rather "adjusts the benefits and burdens of economic life to promote the common good." See *id.* at A22. Further, the funds collected are disbursed to a private benefit fund (the Combined Fund), not a government entity. *Id.* at A23. Thus, the court concluded, "there is no basis whatever for [petitioner's claim] that the statute transgresses the Takings Clause." *Ibid.*

ARGUMENT

The decision of the court of appeals is the latest in a series of unanimous appellate decisions rejecting challenges to the constitutionality of the funding mechanisms of the Coal Act. See *Holland* v. *Keenan Trucking Co.*, 102 F.3d 736 (4th Cir. 1996); *Lindsey Coal Mining Co.* v. *Chater*, 90 F.3d 688, 793-795 (3d Cir. 1996); *In re Chateaugay Corp.*, 53 F.3d 478, 494-496 (2d Cir.), cert. denied, 116 S. Ct. 298 (1995); *Davon, Inc.* v. *Shalala*, 75 F.3d 1114, 1127-1130 (7th Cir.), cert. denied, 117 S. Ct. 50 (1996); *In re Blue Diamond Coal Co.*, 79 F.3d 516, 521-526 (6th Cir. 1996), cert. denied,

117 S. Ct. 682 (1997); *Barrick Gold Exploration, Inc.* v. *Hudson*, 47 F.3d 832 (6th Cir.), cert. denied, 116 S. Ct. 64 (1995). In each of those cases in which review by this Court was sought, the Court has declined review. There is no reason for a different result in this case.

1. Petitioner argues (Pet. 12-21) that the Coal Act violates due process insofar as it requires coal mine operators who left the business of mining coal before 1974 to pay for the health care benefits of their retired employees. Petitioner argues that the Coal Act irrationally imposes retroactive liability on operators, such as petitioner, that left the industry before lifetime benefits were promised and (petitioner contends) did not contribute to the financial crisis in the benefit funds. Pet. 15-17.

As the court of appeals recognized, the Coal Act "come[s] to the Court with a presumption of constitutionality, and * * * the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976). As long as a "statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches." *Pension Benefit Guaranty Corp.* v. *R.A. Gray & Co.*, 467 U.S. 717, 729 (1984). Moreover, "the strong deference accorded legislation in the field of national economic policy is no less applicable when that legislation is applied retroactively." *Ibid.* Even when a statute has retroactive effect, the Due Process Clause is satisfied as long as "the retroactive application of the legislation is itself justified by a rational legislative purpose." *Id.* at 730.

The funding provisions of the Coal Act, including the imposition of premium obligations on pre-1974 signatory operators such as petitioner, satisfy the standards of rational basis review. The Coal Act's objective—resolution of the financial crisis in the health care system for coal miners—is plainly legitimate. Congress knew, from long experience of labor relations in the coal industry from the federal takeover of the coal mines in the 1940s through the Pittston strike of the 1980s, that the crisis in health care benefits threatened to deprive thousands of retired coal miners and their dependents of their health benefits, and also threatened seriously to disrupt interstate commerce. See Coal Act § 19142(b), 106 Stat. 3037. Given the importance of coal production to the national economy and the prospect that those problems could lead to further labor unrest and inflict economic harm on coal operators and retired miners, the Coal Act plainly advances a legitimate government purpose.

As for the means by which Congress accomplished that objective, Congress had at hand several options for allocating the cost of financing the Combined Fund. It could have restricted the financing obligation to signatories of the then-current NBCWA. Alternatively, Congress could have chosen to impose a tax on the coal industry as a whole, or paid for the benefits out of general revenues. It also had a number of intermediate options, each of which would have required line-drawing. It could, for example, have drawn the line at the 1978 NBCWA, which created the "guarantee" and "evergreen" clauses; at the 1974 NBCWA, which established the 1950 and 1974 Trusts and first expressly guaranteed miners certain life-

time benefits; at the 1950 NBCWA, which created the immediate predecessor of those trusts; or some other point.

Each of those classifications would have been justifiable as a response to the financial crisis in the health care system for miners; each also might have had certain drawbacks in ensuring adequate financing of the health care system for miners. Petitioner argues that when Congress decided to include pre-1974 NBCWA signatories in the funding mechanism, it drew the line at the wrong place. But that kind of line-drawing exercise is a quintessentially legislative task, and "there is no need for mathematical precision in the fit between [the] justification and means" chosen by the legislature. *Concrete Pipe & Prods. of California, Inc.* v. *Construction Laborers Pension Trust*, 508 U.S. 602, 639 (1993).

Congress acted rationally in requiring pre-1974 signatory operators to contribute to the Combined Fund. Every such operator previously employed miners who were entitled to receive retirement health benefits from the 1950 and 1974 trusts. Those trusts were multi-employer trusts; miners received their entitlement to health care benefits based on portable service credits from operators who signed one of the NBCWAs in effect since 1950. Moreover, those trusts provided "comprehensive health care benefits for retired miners and their families" for 45 years, *Coal Commission Report* at vii, and retired miners had "legitimate expectations of health care benefits for life" from the trusts, *id.* at 1. As the Sixth Circuit observed in rejecting the same challenge, all of those miner operators "directly contributed to the Combined Fund's liabilities by providing service credits to [their] former employees." *Blue Diamond Coal*, 79

F.3d at 523. It was therefore proper for Congress to require all the coal operators who had contributed to the liabilities of the benefit funds to pay some of the cost of restoring the financial stability of the health care system. See *Concrete Pipe*, 508 U.S. at 637-638.

In addition, all signatory operators, including those (like petitioner) that had left the business of coal mining, benefitted substantially from participation in the multi-employer benefit system that was established in the 1940s and was facing a crisis in the early 1990s. First, they plainly benefitted from their own miners' labor. See 138 Cong. Rec. S17,603 (daily ed. Oct. 8, 1992) ("technical explanation" of 1992 Coal Act introduced by Sen. Wallop) (Coal Act assigns financial responsibility to "those companies which employed the retirees in question, and thereby benefitted from their services"). Moreover, all signatory operators benefitted from the ease of movement of miners and the labor peace throughout the industry to which those multi-employer trusts (with their portable service credits) significantly contributed. As the court of appeals observed in this case (Pet. App. A13-A14), coal operators extracted "substantial concessions" from the miners over the years in return for "the implicit commitment to assure lifetime health benefits," including the workers' acquiescence in the automation of the mines. See also *Blue Diamond Coal*, 79 F.3d at 524; cf. *Concrete Pipe*, 508 U.S. at 638-639. Congress therefore reasonably concluded that all signatory operators should be held financially responsible for making good on the "moral obligation to the [miners] and retirees" to contribute towards the cost of their health care. See *National R.R. Passenger Corp.* v. *Atchison, T. & S.F. Ry.*, 470 U.S. 451, 477 (1985).

Congress also rationally concluded that inclusion of pre-1974 signatory operators in the Coal Act's financing scheme was necessary to secure adequate funding for the health of retired coal miners and their dependents. Financial and actuarial figures presented at 1991 Senate hearings called into question the feasibility of limiting the so-called "reachback" provision to 1978 and later NBCWA signatories. A more limited reachback provision could well have left a significant number of beneficiaries of the 1950 UMWA Benefit Trust "orphaned." See Staff of House Comm. on Ways and Means, 103d Cong., 1st Sess., *Financing UMWA Coal Miner "Orphan Retiree" Health Benefits* 24-27 (Comm. Print 1993); 138 Cong. Rec. H11,413 (daily ed. Oct. 5, 1992) (Rep. Rahall) (noting that "75 percent of the retirees served by the [UMWA] health funds never worked for, or had any connection with, a currently contributing company"). Given that possibility, it was "surely proper for Congress to legislate retrospectively to ensure that costs of a program are borne by the entire class of persons that Congress rationally believes should bear them." *United States* v. *Sperry Corp.*, 493 U.S. 52, 65 (1989).

Petitioner argues that, because it left the industry in 1966 and created a subsidiary that assumed its premium obligations, it is not responsible for the problems addressed by the Coal Act, because it did not fail to live up to express contractual obligations in the NBCWAs to provide miners with lifetime benefits. Pet. 16-18. But as we explain above (p. 7, *supra*), the Coal Act takes account of differences in responsibility for the fiscal crisis by placing the primary financial burden on operators that signed the 1978 NBCWA and subsequent wage agreements. An operator that did not sign the 1978 NBCWA may be

assigned a retired miner only if no other existing operator that employed that miner signed the 1978 NBCWA, and only if the operator employed the miner for a longer period than any other signatory operator. See 26 U.S.C. 9706(a)(3). Signatory operators like petitioner are the operators of last resort for retired miners who would otherwise be "orphaned"; if those operators were not required to contribute, the costs of health care for their orphans would have to be borne by a smaller group of operators—exactly the situation that led to the crisis that precipitated enactment of the Coal Act.[6]

Moreover, as the court of appeals pointed out (Pet. App. A16 n.5), petitioner's contention, if accepted, would shift the cost of paying the health benefits of petitioner's former employees to other operators who had never employed those miners. In any event, "[i]t is enough to say that the Act approaches the problem of cost spreading rationally; whether a broader [or, here, narrower] cost-spreading scheme would have been wiser or more practical under the circumstances is not a question of constitutional dimension." *Turner Elkhorn*, 428 U.S. at 19.[7] See also *Holland*,

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[6] Petitioner's former subsidiary, EACC, was a signatory to wage agreements after 1966, and therefore has funding obligations for the miners that it employed. To the extent that petitioner contracted with EACC to meet petitioner's future obligations to its retirees, petitioner remains free to seek indemnification under 26 U.S.C. 9706(f)(6), an option that petitioner is pursuing in this case.

[7] Petitioner argues that the court of appeals erred in declining to follow this Court's decision in *Railroad Retirement Board* v. *Alton Railroad*, 295 U.S. 330 (1935). But as the court of appeals noted (Pet. App. A16 n.6), even if the *Alton* decision

102 F.3d at 741 ("[L]egislation need not place remedial burdens on the 'most responsible' party to survive rational basis scrutiny.").

2. Petitioner also argues (Pet. 21-30) that the Coal Act effects an uncompensated taking of its property in violation of the Just Compensation Clause. The court of appeals—like every other appellate court that has addressed the question—correctly determined that there is no "taking" in this case. This Court has identified "three factors with particular significance" for assessing whether a governmental regulation effects an uncompensated taking of property. See *Concrete Pipe*, 508 U.S. at 643. The Court considers the economic impact of the regulation on the claimant, the extent to which the regulation interferes with "reasonable investment-backed expectations," and the nature of the governmental action. *Id.* at 645; *Connolly* v. *Pension Benefit Guaranty Corp.*, 475 U.S. 211, 226 (1986). Those factors lead to the conclusion that the Coal Act is not a taking.[8]

Petitioner argues (Pet. 24-25) that the Coal Act interferes with its expectations, when it left the coal

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itself is "still zoetic," it is readily distinguishable from this case. The difficulty in *Alton* was that some of the railroad companies were required to finance pensions "upon the basis of transactions with which the [railroads] were never connected." 295 U.S. at 350. By contrast, the Coal Act "links operator liability to previous employment relationships by assigning beneficiaries to their former employers where possible." *Chateaugay*, 53 F.3d at 489.

[8] Petitioner argues (Pet. 22) that the court of appeals erroneously merged the due process and taking analyses in this case. The court of appeals' opinion, however, plainly treats the two inquiries as separate, and the court faithfully applied the three factors identified by this Court as relevant to a taking inquiry. See Pet. App. A19-A23.

industry, that EACC would assume any future liability for premiums, and that its contractual obligations under the wage agreements would end when the wage agreements terminated. *Connolly*, however, rejected a similar contention. There, employers that had withdrawn from a multi-employer pension plan when such withdrawal was fully free from liability contended that the subsequent, retroactive imposition of withdrawal liability by Congress upset their reasonable expectations. The Court concluded that, because pension plans had long been the objects of legislative concern even before the enactment of ERISA, prudent employers had more than sufficient notice before enactment of the withdrawal liability provisions that withdrawal might trigger future financial obligations. 475 U.S. at 227.

Here, too, the long history of federal involvement in the coal industry (and particularly in the issue of health benefits for coal miners) belies the notion that pre-1974 NBCWA signatories could have reasonably expected future immunity from further contribution towards the costs of retired employees' health benefits, especially in the face of the instability and fiscal crisis that led to enactment of the Coal Act. As early as 1946, when the government nationalized the coal mines and negotiated the Krug-Lewis Agreement, it was clear both that the stability of the coal industry demanded adequate employee health and welfare benefits, and that the Federal Government was prepared to intervene to ensure the availability of those benefits. The first multi-employer welfare and retirement fund, set up by the 1946 Krug-Lewis Agreement, was managed by three trustees, one of whom was appointed by the Federal Government. *Coal Commis-*

sion Report 18-19.[9] From that point on, the federal government's involvement in establishing the health care delivery system for retired miners was extensive. *Id.* at 21, 22, 23, 27-28. Thus, signatory operators that ceased to contribute to the industry's multiemployer health benefit program could hardly have expected that they would escape all financial responsibility in the event of further federal intervention on behalf of their former employees.

Although petitioner stresses the absence of any statutory obligation to provide benefits in existence at the time that it was a signatory to a national wage agreement (Pet. 25), this Court's decision in *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986 (1984), demonstrates that this argument lacks merit. *Monsanto* held that the Environmental Protection Agency's pre-1972 disclosure of trade secrets submitted to the agency under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) did not constitute a "taking." *Id.* at 1008-1010. The Court recognized that, during the period in question, "neither FIFRA nor any other provision of law gave EPA authority to disclose data obtained from Monsanto," but it explained that, "[i]n an industry that long has been the focus of great public concern and significant government regulation, the possibility was substantial that the Federal Government, which had thus far taken no position on disclosure of * * * [pesticide data], upon focusing on the issue, would find disclosure to be in

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[9] Indeed, the Coal Commission noted that the multiemployer funds providing health care benefits to retired miners were created "in the White House in a contract between the federal government and the UMWA." *Coal Commission Report* vii.

the public interest." *Id.* at 1008-1009. In an industry that has been the focus of as much public concern and governmental regulation as the coal industry, the possibility was surely substantial as early as the 1950s that the Federal Government would, upon focusing on the issue, find compulsory employer funding of retired miners' health benefits to be necessary to the proper functioning of interstate commerce.[10]

Petitioner also argues that the liability imposed by the Coal Act is out of proportion to its experience with the prior benefit funds, because petitioner fulfilled its financial commitment to the miners through EACC and did not contribute to the financial crisis that necessitated enactment of the Coal Act. Pet. 28. These arguments have been soundly and uniformly rejected by the courts. See, *e.g.*, *Davon*, 75 F.3d at 1124-1125; *Lindsey Coal Mining Co.*, 90 F.3d at 694; *In re Blue Diamond Coal Co.*, 79 F.3d at 522-523. As the court of appeals in this case noted, petitioner is assigned funding obligations for miners that petitioner employed only in those situations where no post-1977 NBCWA signatory can be found. Pet. App. A21. Petitioner's liability for premiums under the Coal Act is therefore tailored to its previous employment history with miners who will be receiving health care benefits under the Act.

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[10] Although petitioner relies on *United States* v. *Pewee Coal Co.*, 341 U.S. 114 (1951), to argue that past federal intervention in the coal industry has resulted in successful takings claims (Pet. 25 n.10), that case involved a five-month government takeover of coal mines to avert a nationwide strike during World War II, an appropriation of physical property that cannot credibly be compared with the assessments imposed by the Coal Act.

Although petitioner argues that the Court's takings jurisprudence requires that the Coal Act have "average reciprocity of advantage," Pet. 28 n.12, there is no such requirement. While the existence of "average reciprocity of advantage" may lead to the conclusion that no uncompensated taking has occurred (see *Hodel* v. *Irving*, 481 U.S. 704, 715 (1987)), "the Just Compensation Clause 'has never been read to require the * * * courts to calculate whether a specific individual has suffered burdens * * * in excess of the benefits received' in determining whether a 'taking' has occurred." *Sperry*, 493 U.S. at 61 n.7 (quoting *Keystone Bituminous Coal Ass'n* v. *DeBenedictis*, 480 U.S. 470, 491 n.21 (1987)).

Finally, petitioner takes issue (Pet. 29) with the First Circuit's conclusion (Pet. App. A23) that the Coal Act—like the provisions of the Multiemployer Pension Plan Amendments Act (MPPAA), 29 U.S.C. 1381-1461, upheld by this Court in *Gray*, *Connolly*, and *Concrete Pipe*—"is merely a public program that readjusts economic burdens." Petitioner argues (Pet. 29) that the Coal Act is distinguished from the MPPAA because the scope of the Coal Act's retroactivity is greater, and because the Coal Act imposes liability on companies that did not threaten the financial stability of the funds. That argument is wide of the mark. The crucial aspect of the governmental regulation at issue here is that the government has not physically invaded or permanently appropriated anyone's assets, but has merely assigned a financial liability to the employer based on particular relationships in the past. Cf. *Concrete Pipe*, 508 U.S. at 643. The Court has been much less willing to find a taking when the challenged government regulation merely imposes financial liability on an employer. Thus,

petitioner's attempt to "shoehorn" (*ibid.*) its argument into a taking claim by relying on the nature of the governmental action must fail.

The fundamental question under the Just Compensation Clause is whether Congress is "forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Connolly*, 475 U.S. at 227. There is no such unfairness here. It was eminently reasonable for Congress to conclude that NBCWA signatories as a class bear a collective responsibility, and one grater than that of the public as a whole, for the health care of retired coal miners and their dependents. Coal operators such as petitioner benefitted specially from the labor of those miners as well as from the multiemployer health care system established to benefit the entire coal industry. Under those circumstances, "fairness and justice" do not require the public at large to assume the costs of the Combined Fund, nor do they entitle petitioner to immunity from sharing in those costs.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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